

1
2 MARK E. VOVOS, #4474
3 2721 S Pittsburg
4 Spokane, WA 99203
5 (509) 326-5220
6 *Attorney for Charles Harrison Barbee*

7
8
9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA,)	NO. 2:96-CR-00258-WFN-1
v.)	MOTION FOR COMPASSIONATE
CHARLES HARRISON BARBEE,)	RELEASE UNDER 18 U.S.C.
)	§ 3582(c)(1)(A) AND TO
Defendant.)	EXPEDITE
)	

INTRODUCTION

16 COMES NOW the Defendant, Charles Barbee, through his counsel, Mark E.
17 Vovos, and respectfully requests this most Honorable Court to consider his Motion
18 for Compassionate Release under 18 U.S.C. § 3582(c)(1)(A). Mr. Barbee's
19 appellate case (No. 21-30043), for issues pertaining to his January 25, 2021 re-
20 sentencing before this Court, is no longer pending in the Court of Appeals. The
21 Ninth Circuit Court of Appeals has ruled on Mr. Barbee's appeal and this Court
22 now has jurisdiction. Mr. Barbee asks the Court to rule on this Motion at the time
23

MOTION FOR COMPASSIONATE RELEASE AND TO
EXPEDITE - 1.

MARK E. VOVOS, P.S.
Attorneys At Law
2721 S. Pittsburg
Spokane, WA 99203
(509) 326-5220

1 of his resentencing for the above-mentioned appellate ruling. This will allow for
2 oral argument by his counsel for any issues not raised from this Motion.

3 As the Court is aware and attachments will show, Mr. Barbee filed his first
4 Compassionate Release Motion and it was denied. Subsequent to this filing,
5 Mr. Barbee filed a second 18 U.S.C. § 3582(c)(1)(A) on May 2, 2022. This second
6 motion was also denied. Mr. Barbee has since served additional time and now has
7 the required 30 years served on his sentence, as well as being 70 years of age. (*See*
8 Exhibit F, attached hereto).

9
10 Mr. Barbee previously sought an Indicative Ruling pursuant to Federal Rule
11 of Criminal Procedure 37 for Compassionate Release under 18 U.S.C.
12 § 3582(c)(1)(A)(i). This subsection required demonstration that, “extraordinary
13 and compelling reasons warrant such a reduction.”
14

15 The Court found that the defendant did not meet the requirements at that
16 time. In this Order, the Court also stated, “Though the Court does not feel the
17 Defendant meets the requirements for compassionate release now, if his health
18 changes for the worst in the future, or when he meets the requirements laid out in
19 18 U.S.C. § 3582(c)(1)(A)(ii), the Court invites him to seek compassionate
20 release.”
21
22

23
24
25 MOTION FOR COMPASSIONATE RELEASE AND TO
EXPEDITE - 2.

MARK E. VOVOS, P.S.
Attorneys At Law
2721 S. Pittsburg
Spokane, WA 99203
(509) 326-5220

Mr. Barbee turned 70 years of age on March 2, 2022, qualifying him for consideration for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(ii), and thus places this Motion before the Court. The Court is fully aware of Mr. Barbee's rehabilitative efforts as detailed in **ECF No. 466** and **ECF No. 471**, filed July 20, 2021 and September 28, 2021 respectively. He requests consideration in this Motion of these filings, as to his rehabilitative efforts.

ARGUMENT

Under USSG 1B1, CMTN.1(B) in determining a projected release date of an inmate, Courts may take into account any Good Time Credits. In compliance with the changes Congress made in the First Step Act, the Justice Department's Bureau of Prisons, published a "Final Rule" pertaining to Good Time Credits on February 2, 2022 (*see* 28 CFR Part 523 – Exhibit D attached hereto).

There are many rulings supporting the application of Good Time Credits awarded under 18 U.S.C. § 3624(B)(1) (*see United States v. Burrill*, No. 17-CR-00491-RS, 445 F.Supp.3d 22, 2020 U.S. Dist. LEXIS 65774; *also United States v. Heffington*, 476 F.Supp.3d 1042 Granted August 3, 2020; *also United States v. Saenz*, Dist. LEXIS 122905 July 9, 2020). Relevant in all of these cases “Good Time Credits” were used in the determination and granting of Compassionate Release.

MOTION FOR COMPASSIONATE RELEASE AND TO EXPEDITE - 3.

MARK E. VOVOS, P.S.
Attorneys At Law
2721 S. Pittsburg
Spokane, WA 99203
(509) 326-5220

With the inclusion of Good Time Credits, Mr. Barbee will have reached the
30-year requirement of 18 U.S.C. § 3582(c)(1)(A)(ii) on or about November 30,
2022. On this date he will have served 26 years and 52 days for a total of 9548
days (including six leap year days) and earned 1408 days of Good Time, for a total
of **10,956** days. This will satisfy the 30 years (30 years x 365 = 10,950 days + 6
leap year days for a total of **10,956** days) required in the statute 18 U.S.C.
§ 3582(c)(1)(a)(ii). Mr. Barbee asks this Court to review the information above and
make a ruling for Compassionate Release on or about November 30, 2022. This
will afford the Bureau of Prisons adequate time to schedule and execute the
necessary procedures to affect Mr. Barbee's return to society. (*See* Exhibit C
attached hereto.)

The Bureau of Prisons has recently diagnosed Mr. Barbee with
hypothyroidism and possible nerve damage caused by deterioration in the area of
the 8th and 9th vertebrae, which is in the neck area. He has numbness in his left arm
and hand due to this pinched nerve condition. The Bureau of Prison staff explained
to Mr. Barbee that this is common in older persons. He is currently waiting for
medical trips to be scheduled so specialists can determine a treatment plan for
these conditions. He is still having issues with high blood pressure and medical has
changed his prescriptions from Lisinopril to Amlodipine 10 mg, and again to

1 Hydrochlorothiazide 12.5 mg. He is taking Atorvastatin 10 mg. for high
2 cholesterol, and Levothyroxine for his hypothyroid issue. (*See* Exhibit E attached
3 hereto.)

4

CONCLUSION

5

6 Mr. Barbee requests that this Court consider the following:

- 7 • He is a first time offender.
- 8 • This Honorable Court has already acknowledged his rehabilitative
9 efforts as detailed in **ECF No. 466** and **ECF No. 471**, filed July 20,
10 2021 and September 28, 2021, respectively.
- 11 • Mr. Barbee continues to seek self-improvement. He is attending
12 **THRESHOLD**, a **First Step Act** program, through Religious
13 Services at FCI Talladega. This is a six-month program supervised by
14 the Chaplain over Religious Services, with the assistance of the
15 Kairos organization.
- 16 • Mr. Barbee will have served 30 years of his sentence, counting his
17 Good Time, on November 30, 2022, and has accrued over 23 years of
18 clear conduct in the Bureau of Prisons.

- 1 • He has paid on the restitution ordered by this Court and should be able
2 to significantly improve on these payments, if released and earning
3 better wages. (*See Exhibit B attached hereto.*)
4
- 5 • He is Social Security and Medicare eligible.
6
- 7 • He was employed by AT&T for 21 years and 10 months. He retired
8 with good evaluations from AT&T, which also approved him for
9 rehire should he desire to return.
10
- 11 • He has recently been experiencing several medical issues that are
12 currently being assessed by the Bureau of Prisons. He is being
13 scheduled for outside medical trips to determine treatment options for
14 hypothyroidism, a pinched nerve issue in his left shoulder, arm and
15 hand. (*See Exhibit E attached hereto.*)
16
- 17 • Mr. Barbee is sincerely repentant of his actions. He is willing and able
18 to be a productive member of society, given the opportunity.
19
- 20 • Mr. Barbee has a release plan. He will reside with his eldest daughter,
21 Milica Lattanzie, at 5017 West 12th Street Drive, Greeley, Colorado
22 80634. This home has already been approved by personnel from the
23 Parole Office. (*See Exhibit A attached hereto.*)
24
- 25

MOTION FOR COMPASSIONATE RELEASE AND TO
EXPEDITE - 6.

MARK E. VOVOS, P.S.
Attorneys At Law
2721 S. Pittsburg
Spokane, WA 99203
(509) 326-5220

- 1
- He has demonstrated that he is ready to return to the community. His
 - 2 motion seeking a ruling from the Court, pursuant to 18 U.S.C.
 - 3 § 3582(c)(1)(A) should be granted.
- 4

5 Mr. Barbee is at that point in his life when the aging process is beginning to
6 deteriorate his health in general. He has issues normal for his age that affects a
7 person's quality of life. He respectfully requests that this Court rule in favor of his
8 release to his eldest daughter's family. (*See Exhibit A attached hereto.*) They will
9 assist him in dealing with these inevitable age-related circumstances. Mr. Barbee
10 would request that considering Mr. Barbee is 70 years of age, and has met the 30
11 year threshold needed under the Compassionate Release Statute, 18 U.S.C.
12 § 3582(c)(1)(A), the Court would rule in favor of his release on or about
13 November 30, 2022.

14

15 RESPECTFULLY SUBMITTED this 31st day of October, 2022.

16 *s/ Mark E. Vovos, #4474*

17 _____
18 Attorney for Charles Harrison Barbee
19 2721 S. Pittsburg
20 Spokane, WA 99203
21 Phone: (509) 326-5220
22 E-mail: mvovos@mvovos.digitalspacemail8.net

1
CERTIFICATE OF SERVICE

2 I hereby certify that on October 31, 2022, I electronically filed the foregoing
3 document with the Clerk of the Court using the CM/ECF System which will send
4 notification of such filing to Joseph Harrington, Assistant United States Attorney.

5 *s/ Mark E. Vovos, #4474*
6

7 Attorney for Charles Harrison Barbee
8 2721 S. Pittsburg
9 Spokane, WA 99203
10 Phone: (509) 326-5220
11 E-mail: mvovos@mvovos.digitalspacemail8.net

12
13
14
15
16
17
18
19
20
21
22
23
24
25
MOTION FOR COMPASSIONATE RELEASE AND TO
EXPEDITE - 8.

MARK E. VOVOS, P.S.
Attorneys At Law
2721 S. Pittsburg
Spokane, WA 99203
(509) 326-5220